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10
11 **UNITED STATES DISTRICT COURT FOR THE**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13

14 IN RE: AIR CRASH AT SAN FRANCISCO,
15 CALIFORNIA ON JULY 6, 2013

MDL No. 2497

16 **[PROPOSED] ORDER FOLLOWING**
17 **MAY 30, 2014 CASE MANAGEMENT**
18 **CONFERENCE, INCLUDING PROCESS**
19 **FOR NEW COMPLAINTS**

20 ***As Modified by the Court***
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The Court held a management conference in the *In re: Air Crash at San Francisco, California on July 6, 2013* MDL No. 2497 Proceedings (“Proceeding”) before Honorable Yvonne Gonzalez Rogers on May 30, 2014, at 10:00 a.m. The appearances of counsel are noted on the record. All parties having been represented by their attorneys of record, the Court having conferred with counsel and counsel having participated in the conference, and good cause appearing therefore, the Court enters the following orders for management of the Proceeding and each case already joined, or to be joined, in the Proceeding:

1. PLEADINGS

A. New Complaints

Plaintiffs joining the MDL litigation must file the following documents:

- **Abbreviated Complaint**, which is attached as Exhibit A. This must be filed as an individual case with the Clerk’s Office and served on all defendants that Plaintiff choses to name. Frank Silane, counsel for Asiana Airlines, Inc., has authority to accept service on behalf of his client only. The other Defendants require service as permitted by law.
- **Administrative Motion to Consider Whether Case Should be Related**, which is attached as Exhibit B.
- **Notice of Adoption of the Master Complaint By Plaintiff**, which is attached as Exhibit C. The Master Consolidated Complaint is Docket No. 60 in MDL No. 2497. A party desiring to add claims not included in the master complaint must do so as an exhibit accompanying the Notice of Adoption Form.
- **Administrative Motion to Dismiss Complaint Without Prejudice**, which is attached as Exhibit D.
- An electronic and editable copy of these documents can be obtained from liaison counsel for the Plaintiffs, Frank M. Pitre, of Cotchett, Pitre & McCarthy, LLP.

B. Response to New Complaints

On or before June 12, 2014, Defendants will each file a Master Answer to the Master Consolidated Complaint. For any Notice of Adoption that adds causes of action not present in

the Master Consolidated Complaint, Defendants will file an Abbreviated Answer on or before the later of (i) June 12, 2014, or (ii) 21 days after the filing of the Notice of Adoption.

2. DISCOVERY

The parties have agreed upon and submitted to the Court's review the following proposed discovery plan for non-expert discovery:

a. Initial Disclosures Required by Rule 26(a)(1)

Pursuant to this Court's Order Re Case Management Procedures, the parties exchanged initial disclosures pursuant to Rule 26(a)(1) on May 12, 2014. Defendants Asiana and Boeing provided Plaintiffs with their respective consolidated initial disclosures. Plaintiffs, through Plaintiffs' Liaison Counsel, provided joint initial disclosures related to liability issues. Most (but not all) of the individual Plaintiffs provided separate initial disclosures on damages issues.

b. Subjects and Timing of Non-Expert Discovery

(1) *Damages Discovery*

Limited damages discovery will be required to cover categories of damages not covered in sufficient detail by Plaintiffs' Rule 26 disclosures. The parties have agreed that Defendants will review the individual damages initial Rule 26 disclosures of the Plaintiffs and, where required, serve written discovery tailored to each individual case geared to obtaining information required for a full and fair assessment of the damages claims. Defendants also will serve document subpoenas, where necessary, to obtain individual Plaintiff's medical records and/or records related to economic loss claims. Upon receipt of the responses to the written discovery and subpoenaed records, Defendants will determine in which cases it will be necessary to take party or non-party depositions. The parties will meet and confer on ways to minimize the inconvenience and costs associated with the taking of depositions outside of this jurisdiction, including the possibility of taking depositions, where appropriate, by video conferencing. Defendants also may request independent medical examinations in a limited number of cases involving more seriously injured plaintiffs or plaintiffs claiming continuing disability. As in the case of depositions, the parties agree to meet and confer on ways to minimize the cost and

1 inconvenience associated with the conduct of any independent medical examinations which may
2 be required.

3 The parties have agreed to the following schedule for non-expert damages discovery:

- 4 • On or before **June 30, 2014** – Service of written damages discovery on plaintiffs
5 and service of damage document subpoenas, including subpoenas for documents
6 related to claims for loss of earnings.
- 7 • On or before **June 30, 2014** – Service of subpoenas on medical care providers
8 identified in Plaintiffs' Rule 26 disclosures.
- 9 • On or before **August 18, 2014** – Service of notices of depositions on party and
10 non-party witnesses. (Service of notices of depositions by this date will be
11 contingent upon Plaintiffs' service of timely and complete responses to
12 Defendants' written discovery.)
- 13 • **August 18, 2014** – Service of requests for physical and/or mental examinations.
14 (Service of requests for physical and/or mental examinations by this date will be
15 contingent upon the Plaintiffs' service of timely and complete responses to
16 Defendants' written discovery.)

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18 Once the defendants have sufficient damages information to make full and fair
19 assessments of each individual Plaintiff's damages claims, the parties will schedule mediations.
20 The parties also will attempt, as soon as reasonably possible, to establish reasonable guidelines
21 for evaluating fair passenger compensation and to facilitate settlements. It is anticipated that
22 mediations in those cases where full and fair damages assessments may be made and where
23 settlement through direct negotiations is unsuccessful will commence by **September 15, 2014**,
24 but the parties will be amenable to commencing mediations prior to that date in the event that
25 there are cases which warrant earlier mediation.

26 (2) *Liability Discovery*

27 Plaintiffs have offered in their joint initial disclosures to make available to Defendants
28 documents obtained by plaintiffs pursuant to Freedom of Information Act Requests, photographs
and videos of the crash, and numerous articles concerning the crash. Plaintiffs will produce

those items to Defendants by **July 29, 2014**. Defendant Boeing has offered in its initial disclosures to produce its submission to the NTSB and the documents cited or referred to the submission, provided that the necessary protective order is entered.

The parties have further agreed that, without waiving any objections based on privilege, Defendants will respond to targeted liability discovery in the form of requests for admissions and requests for production served by plaintiffs in draft form on May 9, 2014. It is anticipated that defendants will respond to these targeted discovery requests with pleadings by **July 29, 2014**—sixty (60) days from May 30, 2014—and that the production of documents will take place on a rolling basis, which may extend beyond sixty (60) days from service.

The parties will also need to address the procedure for identifying responsive documents, the format for ESI production, the terms of a protective order, the simplification of a privilege log, and any other potential detail surrounding the production. The parties anticipate that they will address and resolve these issues as soon as reasonably possible.

3. MEDIATORS

All parties will meet and confer to select mediators.

4. NEXT CASE MANAGEMENT CONFERENCE

The next case management conference is set for September 26, 2014 at 10:00 a.m. in Courtroom 1, United States Courthouse, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California. A joint case management statement must be filed with this Court by September 19, 2014.

IT IS SO ORDERED.

Dated: 6/12/2014



HON. YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

1 Approved as conforming to the rulings of the Court:

2 DATED: June 6, 2014

COTCHETT, PITRE & McCARTHY, LLP

3 By: /s/

4 FRANK M. PITRE
5 CHRISTOPHER LAVORATO
6 ALEXANDRA A. HAMILTON

7 *Liaison Counsel for Plaintiffs*

8 DATED: June 6, 2014

CONDON & FORSYTH LLP

9
10 By: /s/

11 FRANK A. SILANE
12 JENNIFER J. JOHNSTON
13 SCOTT D. CUNNINGHAM
14 IVY L. NOWINSKI
15 NATASHA N. MIKHA

16 *Attorneys for Defendant:*
17 *Asiana Airlines, Inc.*

18 DATED: June 6, 2014

PERKINS COIE LLP

19 By: /s/

20 BATES M. LARSON
21 BRUCE D. CAMPBELL
22 CHARLES W. MULANEY
23 ERIC B. WOLFF
24 GRANT J. SILVERNALE, III,
25 GRETCHEN M. PAINE
26 JOHN D. DILLOW
27 KAYCIE L. WALL
28 MICHAEL E. SCOVILLE

Attorneys for Defendant:
The Boeing Company, a Corporation

ATTESTATION OF E-FILED SIGNATURES

I, Alexandra A. Hamilton, am the ECF User whose ID and password are being used to file the Plaintiffs' Joint Case Management Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: June 6, 2014

COTCHETT, PITRE & MCCARTHY, LLP

By: _____
Attorneys for Plaintiffs